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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Aurora Mercy Delgado,

10 Plaintiff,

11 v.

12 Commissioner of Social Security
13 Administration,

14 Defendant.

No. CV-23-02515-PHX-DLR

ORDER

15
16 On February 19, 2020, Aurora Delgado (“Claimant”) filed an application for Social
17 Security Disability Insurance benefits, alleging disability beginning January 29, 2020.
18 (AR 19.) The state agency denied her claim initially on May 28, 2020, and again on
19 reconsideration on September 22, 2020. (AR 60, 69.) After an administrative hearing, the
20 Administrative Law Judge (“ALJ”) issued an unfavorable decision on May 21, 2022,
21 finding Claimant not disabled. (AR 31.) The Appeals Council denied review of the
22 decision, making the ALJ’s decision the final decision of the Commissioner of the Social
23 Security Administration. (AR 1–3.) Claimant seeks judicial review of the Commissioner’s
24 decision under 42 U.S.C. § 405(g).

25 **I. Standard**

26 An ALJ’s factual findings are “conclusive if supported by substantial evidence.”
27 *Biestek v. Berryhill*, 139 S. Ct. 1148, 1153 (2019) (quotation and citation omitted).
28 Substantial evidence is “more than a mere scintilla” and “means—and means only—such

1 relevant evidence as a reasonable mind might accept as adequate to support a conclusion.”
 2 *Id.* at 1154 (quotations and citations omitted). “When evidence reasonably supports either
 3 confirming or reversing the ALJ’s decision, [the Court] may not substitute [its] judgment
 4 for that of the ALJ.” *Batson v. Comm’r of Soc. Sec. Admin.*, 359 F.3d 1190, 1196 (9th Cir.
 5 2004). The substantial evidence standard is a “highly deferential standard of review.”
 6 *Valentine v. Comm’r of Soc. Sec.*, 574 F.3d 685, 690 (9th Cir. 2009). In its review of an
 7 ALJ’s decision, the Court reviews only those issues raised by the party challenging the
 8 decision. *See Lewis v. Apfel*, 236 F.3d 503, 517 n.13 (9th Cir. 2001).

9 To determine whether a claimant is disabled, the ALJ engages in a five-step process.
 10 20 C.F.R. § 404.1520(a). The claimant bears the burden of proof on the first four steps, but
 11 the burden shifts to the Commissioner at the fifth step. *Tackett v. Apfel*, 180 F.3d 1094,
 12 1098 (9th Cir. 1999). At the first step, the ALJ determines whether the claimant is presently
 13 engaging in substantial gainful activity. 20 C.F.R. § 404.1520(a)(4)(i). At the second step,
 14 the ALJ determines whether the claimant has a “severe” medically determinable physical
 15 or mental impairment. *Id.* § 404.1520(a)(4)(ii). At the third step, the ALJ considers whether
 16 the claimant’s impairment or combination of impairments meets or medically equals an
 17 impairment listed in Appendix 1 to Subpart P of 20 C.F.R. Part 404. *Id.* §
 18 404.1520(a)(4)(iii). If so, the claimant is automatically determined to be disabled. If not,
 19 the ALJ moves to the fourth step, where he assesses the claimant’s residual functioning
 20 capacity (“RFC”) and determines whether the claimant is still capable of performing past
 21 relevant work. *Id.* § 404.1520(a)(4)(iv). If the claimant is not so capable, the ALJ proceeds
 22 to the fifth and final step, where he determines whether the claimant can perform any other
 23 work in the national economy based on the claimant’s RFC, age, education, and work
 24 experience. *Id.* § 404.1520(a)(4)(v). If not, the claimant is disabled. *Id.*

25 **II. Analysis**

26 **a. Claimant’s Symptom Testimony**

27 When assessing the severity of claimant’s testimony regarding the severity of her
 28 pain and symptoms, an ALJ must engage in a two-step analysis. *Ferguson v. O’Malley*, 95

1 F.4th 1194, 1199 (9th Cir. 2024). “First, the ALJ must determine whether the claimant has
 2 presented objective medical evidence of an underlying impairment which could reasonably
 3 be expected to produce the pain or other symptoms alleged.” *Garrison v. Colvin*, 759 F.3d
 4 995, 1014 (9th Cir. 2014) (quotation and citation omitted). The claimant does not need to
 5 show her impairment “could reasonably be expected to cause the severity of the symptom,”
 6 only that “it could reasonably have caused some degree of the symptom.” *Id.* (quotations
 7 and citation omitted). If the claimant satisfies the first step, the ALJ may reject her
 8 testimony regarding the severity of her symptoms only “by offering specific, clear and
 9 convincing reasons for doing so.” *Ferguson*, 95 F.4th at 199 (quotation and citation
 10 omitted). This Court will uphold the ALJ’s decision so long as he has provided legally
 11 sufficient reasons for rejecting the claimant’s testimony, even if the ALJ did not “clearly
 12 link his determination to those reasons.” *Lewis*, 236 F.3d at 512; *see also Alaska Dep’t of*
 13 *Env’t Conservation v. EPA*, 540 U.S. 461, 497 (2004) (“Even when an agency explains its
 14 decision with less than ideal clarity, a reviewing court will not upset the decision on that
 15 account if the agency’s path may reasonably be discerned.”) (quotations and citation
 16 omitted).

17 Claimant alleges that her impairments do not allow her to sit, stand, or walk for
 18 more than 10-20 minutes; cause back pain affecting her sleep; and create difficulty lifting,
 19 squatting, bending, and stairclimbing. (AR 288, 292, 296.) The ALJ found objective
 20 evidence supports the following impairments: “fibromyalgia, degenerative disc disease of
 21 the cervical spine, obesity, and osteoarthritis,” which could reasonably be expected to
 22 produce the symptoms Claimant alleged. (AR 23, 26.) However, the ALJ determined
 23 Claimant’s testimony regarding “the intensity, persistence and limiting effects of these
 24 symptoms” was not “consistent with the medical evidence and other evidence in the
 25 record.” (AR 26.)

26 Claimant argues the ALJ erred by (1) discounting her symptom testimony based
 27 only on his own summary of the medical evidence and (2) failing to “connect anything
 28 specific in the records summarized” to “any specific inconsistency in [Claimant’s]

1 symptom testimony.” (Doc. 12 at 10–11.) The Court disagrees on both points. Instead, the
2 ALJ properly relied on what he reasonably determined to be inconsistencies between the
3 severity of symptoms Claimant described and the objective medical findings and
4 effectiveness of Claimant’s treatment plan. (AR 26–28.) In doing so, the ALJ did not
5 discredit Claimant’s testimony based on “a lack of medical evidence to fully corroborate
6 the alleged severity of pain.” *Burch v. Barnhart*, 400 F.3d 676, 680 (9th Cir. 2005). Instead,
7 the ALJ determined Claimant’s testimony was inconsistent with objective medical
8 evidence, thus the “ALJ may indeed weigh it as undercutting such testimony.” *Smartt v.*
9 *Kijakazi*, 53 F.4th 489, 498 (9th Cir. 2022).

10 For example, when considering Claimant’s testimony regarding her back pain, the
11 ALJ noted cervical imaging from Claimant’s spine showed only “moderate disc space
12 height loss at C5-6 and C6-7” and “‘mild’ multilevel facet arthropathy.” (AR 26.) Although
13 the ALJ noted “claimant was diagnosed with cervical stenosis” making Claimant a
14 “surgical candidate,” the ALJ also considered imaging from April 2021 finding only
15 “moderate canal stenosis” and the interpreting physician’s description of the imaging as
16 “mild to moderate.” (AR 26, 750.)

17 Regarding Claimant’s testimony alleging an inability to sit or stand for longer than
18 20 minutes and to “lift, squat, bend, stand, reach, walk, sit, kneel, and climb,” the ALJ
19 observed Claimant’s knee exams in August 2019 showed “no fracture or dislocation.” (AR
20 26.) The ALJ also relied on feet imaging showing “only ‘mild’ degenerative changes” and
21 “‘mild’ bilateral calcaneal spurring.” (AR 26.) Finally, the ALJ noted Claimant’s hand X-
22 rays in August 2019 reported as “unremarkable,” and multiple providers consistently noted
23 Claimant as having “normal gait strength and muscle tone” in general examinations. (*E.g.*,
24 AR 439, 565, 610.)

25 The ALJ also considered evidence that Claimant’s symptoms improved with
26 treatment. For example, ALJ noted that Claimant “has the requisite number of tender point
27 findings” to establish an impairment of fibromyalgia, but the objective medical evidence
28 did not support the severity of symptoms Claimant alleged, in part because Claimant

1 reported improvement when taking Cymbalta and Celebrex. (AR 27, 565.)

2 The ALJ reasonably found that the severity of symptoms Claimant testified to
3 inconsistent with the objective medical evidence, including the effectiveness of treatment.
4 The Court finds no reversible error.

5 **b. Dr. Rogers' Assessment**

6 For claims filed on or after March 27, 2017, ALJs give no specific evidentiary
7 weight, including controlling weight, to any medical opinion. 20 C.F.R. § 416.920c(a).
8 Instead, the regulations require that the ALJ consider all medical opinions and articulate
9 how persuasive he finds them. *Id.* at § 416.920c(b). The revised regulations provide that
10 treating physician's assistants are considered medical sources. *Id.* § 416.902(a)(8).

11 The ALJ considers several factors in assessing the persuasiveness of a medical
12 opinion, but he need only articulate in his decision his findings regarding the supportability
13 and consistency of the opinion with other evidence in the record. *Id.* § 416.920c(b)(2).
14 Supportability refers to the supporting explanations and objective medical evidence offered
15 by the source to justify her medical opinion. *Id.* § 413.920c(c)(1). Consistency refers to the
16 uniformity and agreement amongst the evidence from other medical and nonmedical
17 sources. *Id.* § 416.920c(c)(2).

18 The ALJ properly found unpersuasive the opinions of Philio Rogers, D.O. "limiting
19 the claimant to a reduced sedentary residual functional capacity." (AR 28.) The ALJ found
20 that Dr. Rogers based his opinion on Claimant's own self-reporting and "not on objective
21 evidence in the records." (AR 29.) Because the ALJ reasonably found Claimant's reported
22 symptoms to be inconsistent with the objective medical evidence, the ALJ by extension
23 reasonably discounted the opinions of Dr. Rogers to the extent they were based on those
24 same subjective reports.

25 The ALJ noted the opinions of Dr. Rogers lacked support from the objective medical
26 evidence in the record. Specifically, the ALJ found Dr. Rogers' "own records do not
27 support" the limitations contained in his opinions. (AR 29) (emphasis added). For example,
28 Dr. Rogers opined the Claimant's impairments would cause six or more absences from

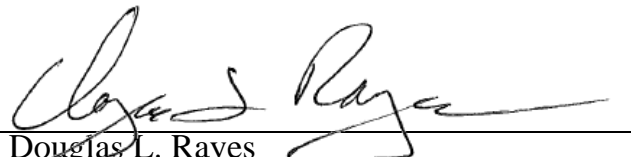
1 work each month; limit sitting or standing to less than two hours at a time; and limit
2 Claimant's ability to lift and/or carry more than 10 pounds. (AR 563, 664.) The ALJ found
3 that Dr. Rogers' general examination did not support these limitations. (AR 29.) Instead,
4 Dr. Rogers, in his general examination, found Claimant to have normal heart, lung,
5 extremity, and neuroglial functions along with normal, strength, tone, gait and no CVA
6 tenderness. (AR 639.) Accordingly, the ALJ found the objective medical evidence in the
7 record did not "support the disabling limitations in the opinions of Dr. Rogers." (AR 29.)

8 The ALJ also found Dr. Rogers' opinion was inconsistent with objective medical
9 evidence from other medical sources within the record. In making this determination, the
10 ALJ relied on much of the same objective evidence cited when discounting Claimant's
11 symptom testimony. (AR 29.) For example, ALJ noted Dr. Rogers' opinion was not
12 consistent with imaging conducted in April 2021 confirming only "moderate canal
13 stenosis" and "mild to moderate bilateral neural foraminal stenosis." Similarly, knee X-
14 rays in August 2019 showed no "fracture or dislocation", feet imaging showed only "mild"
15 degenerative changes and "mild" bilateral spurring, and hands X-rays in August 2019 were
16 "unremarkable." (AR 29.) Finally, the ALJ relied on previous general examinations
17 showing Claimant had "normal strength and muscle tone." (*E.g.*, AR 439, 565, 610.) The
18 ALJ reasonably found the opinions of Dr. Rogers lacked consistency with objective
19 medical evidence in the record. The Court finds no reversible error.

20 **IT IS ORDERED** that the ALJ's decision is **AFFIRMED**. The Clerk is directed to
21 enter judgment accordingly and terminate this case.

22 Dated this 19th day of February, 2025.

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Douglas L. Rayes
Senior United States District Judge